

NSC-D/LOS # 546

MEMORANDUM

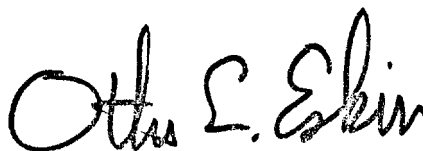
UNCLASSIFIED

March 3, 1976

TO : Members of the LOS Executive Group

SUBJECT : Treasury Department Comments on Committee Issues

Attached is a letter from Robert Vastine of the Department of the Treasury regarding Committee I issues.

  
Otho E. Eskin  
Staff Director

Attachment:

As stated.

NSC REVIEW COMPLETED

TREA has not reviewed. Processed IAW CIA TREA arrangement letter dtd 4/11/08.

UNCLASSIFIED



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

DEPUTY ASSISTANT SECRETARY

March 2, 1976

Dear Ambassador Learson:

I understand that the U.S. negotiators at the recent Committee I intersessional meeting (New York, February 2-13) are now more optimistic about the deep seabed negotiations. The compromises made with the LDC's on new treaty articles were noted as signs of progress and the new treaty language has been taken as an indication that the LDC's are now more flexible on deep seabed economic issues, and on the powers and decision-making procedures of the Authority.

I understand that these new articles will be discussed at the March 3 Executive Group meeting but that they now have no official status, since no nation has agreed to them. Although we agree that some progress was made at the intersessional meeting, Treasury believes that progress was not sufficient to justify U.S. acceptance of these new articles. Some of them are inconsistent with our economic interests in the deep seabed and with existing U.S. commodity policy.

For example, the new version of Article 9 has been characterized as a "concession" on the part of the LDC's because it no longer calls for direct price and production controls, and instead focuses on "commodity arrangements" and compensatory finance to handle the land-based producer problem. But the text makes important changes in the Article 9 text that was submitted by the U.S. after protracted negotiations between State and Treasury, and complimented by a joint memorandum of understanding addressed to the two Secretaries.

The most important defect in the new Article 9 draft is the deletion of the old headnote to paragraph 2. The headnote of the U.S. proposed Article 9 means that the Authority, in entering into commodity or other arrangements, would do so only in its capacity as a deep seabed miner (through its operating arm, the Enterprise) and could not speak for all seabed production. This critically important concept is vitiated in the new Article 9. Acceptance of language that would accede to the LDC demand that ISRA represent all seabed production is inconsistent with our Memorandum of Understanding, unacceptable to Treasury, and indeed contradicts what I have explicitly understood the State Department's position to be.

NSC REVIEW  
COMPLETED

- 2 -

The new Article 9 compromise language substitutes the phrase, "Protect against the adverse economic effects of a substantial decline in the mineral export earnings..." for the phrase "offsetting the adverse economic effect of a serious and harmful decline in the mineral export earnings" of the LDC land-based producers. The word "protect" implies price and production controls, whereas the word "offset" implies compensatory financing or adjustment assistance.

Particularly troublesome is the statement in the new text that "total production from the Area shall not exceed an amount specified in accordance with Article...". The language would appear to grant ISRA production control. The new text weakens the criteria that a land-based producer must meet to qualify for compensatory financing. Treasury has circulated a position paper which is consistent with existing U.S. policy, relies on existing compensatory finance facilities and emphasizes the role of development banks in the resolution of the land-based producer issues. The system of compensation referred to in the new Engo text should be explicitly tied to existing compensatory finance arrangements.

Another area of concern is the new Article 21. Treasury strongly objects to the new language and questions the authority of the negotiators to change significantly this key article at the intersessional meeting. The compromise article backs off from the U.S. text which stated that "the purpose of the Authority is to promote exploration for and exploitation of the resources of the Area. The Authority to that end shall supervise activities in the Area." The new text says ISRA shall "organize and control activities in the Area, particularly with a view towards the administration of resources of the Area...".

This language is a decided concession of our economic interests. It is a grant of power to the Authority that again is completely inconsistent with the headnote of U.S. Article 9, and that in combination with the new Article 9 (4)(iii) providing absolute production limits, is unacceptable.

The new Article 21 locks us into the position that it must be through the Authority that the States Parties shall conduct deep sea mining. This new language implies far more of a tie-in with the ISRA than the type of contractual arrangement (profit sharing) envisioned by the U.S. The cross reference to Article 9 raises the problem that the ISRA in its role as the organization which "shall organize and control" all mining activities

- 3 -

would represent all deep seabed production in other international arrangements. This clearly would violate our Memorandum of Understanding.

We also object to the language in the Engo Article 22: "The Authority shall exercise effective control of a general and overall nature in respect of the conduct of all Activities in the Area...". Although it is an improvement over the Single Negotiating Text which insisted on "direct and effective control", it is still not acceptable. This language grants broad powers to the ISRA in the exercise of its duties. The notion of Authority control over all seabed activities is further enshrined in Article 22(2).

I am pleased that the LDC's have agreed that the Enterprise would be treated on an equal basis with other firms. I assume that acceptance of this concept by the developing countries is not contingent on a revival of the so-called banking system. This system is a disguised way of limiting access to the seabed -- in effect, an unacceptable form of production control.

We think the price of the "progress" represented in the new Engo text has been very high. Should the U.S. agree to certain provisions in the new compromise articles, we would undermine our negotiating leverage at the Conference and our economic interests in the deep seabed. Thus, I have brought to your attention our objections to these new articles embodying unacceptable economic concessions.

Sincerely yours,



Robert Vastine

Hon. T. Vincent Learson  
Special Representative of the  
President for the Law of the  
Sea Conference  
U.S. Department of State  
Washington, D. C. 20520